

March 22, 1956

NEW HAMPSHIRE LAW LIBRARY

SEP 22 1998

CONCORD, N.H.

Mrs. Elizabeth Woodrow, Town Clerk  
of Windsor, New Hampshire  
R. F. D.  
Hillsboro, New Hampshire

Dear Mrs. Woodrow:

In response to your inquiry of March 20, 1956 relative to Charles I. Nelson of Windsor who received a plurality of votes for the office of auditor at both the town and school district meetings and has failed to sign the affidavit required by RSA 588:14 that he is not a subversive person as defined in that chapter, I advise as follows:

Said section of the law provides "No person shall become a candidate for election to, nor qualify for, any public office under the election laws of this state unless he or she shall file with the declaration of candidacy, or prior to qualifying, an affidavit that he or she is not a subversive person as defined in this chapter. No declaration of candidacy shall be received for filing by any town or city clerk or by the secretary of state unless accompanied by the affidavit aforesaid and there shall not be entered upon any ballot or voting machine at any election the name of the person who has failed or refused to make the affidavit aforesaid."

I understand that Windsor has not adopted the non-partisan ballot system as provided in RSA 59:73, 77-86, that declarations of candidacy have not been required, nor are official printed Australian ballots used. I under-

March 22, 1956

stand that, because of the small voting population of Windsor blank pieces of paper are used, that the balloting is in accordance with RSA 61 and that by that method the name of Charles I. Nelson was written on more ballots for the offices named than any other name. Election of auditors is provided for by RSA 41:31 and RSA 197:14, 18, 25.

Voting for town offices is under the election laws of this state and if Mr. Nelson does not execute the required oath he may not qualify for nor assume these offices.

You have notified the secretary of state that all other officers chosen at the town and school district meetings have taken this loyalty oath except Mr. Nelson who asked to have one week before deciding whether he would sign or not and that he has not so signed although the granted week has expired.

RSA 42 provides for the time and method by which elected town officers shall qualify. I invite your attention to this chapter of the law which, incidentally provides penalties for failure to take the oath of office.

While RSA 197:17 does not enumerate school district auditors as being required to take the oath by RSA 42:2 the taking of the oath of office is required of all persons chosen or appointed to any public office under any law by RSA 92:2.

The oath of office in either case may not be administered unless and until the loyalty affidavit is duly executed and filed.

Failure to qualify results in a vacancy in the offices. School district auditor vacancies are filled by the school board until the next annual meeting of the district. See RSA 197:26. Town auditor vacancies are filled by special town meeting called for the purpose. See RSA 41:51.

OFFICE OF ATTORNEY-GENERAL  
Mrs. Elizabeth Woodrow -- 3.

March 22, 1956

Persons chosen or elected to fill vacancies  
are likewise required to execute and file the necessary loyalty  
affidavit before qualifying.

Very truly yours,

George F. Nelson  
Assistant Attorney General

GFM:W

cc - Secretary of State